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Right of peoples to self-determination

Universal realization of the right of peoples to self-determination

Report of the Secretary-General

Summary

In its resolution 61/150, the General Assembly requested the Secretary-General to report to the Assembly at its sixty-second session on the question of the universal realization of the right of peoples to self-determination. The present report has been prepared pursuant to this request. It contains a summary of developments relating to the consideration by the Human Rights Council of the subject matter. It also outlines relevant jurisprudence of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights on the treaty-based human rights norms relating to the realization of the right of peoples to self-determination.

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I. Introduction

1. In its resolution 61/150, the General Assembly requested the Human Rights Council to continue to give special attention to the violation of human rights, especially the right to self-determination, resulting from foreign military intervention, aggression or occupation and requested the Secretary-General to report on the question to the Assembly at its sixty-second session. The present report is prepared pursuant to paragraph 6 of resolution 61/150.

2. The present report contains a summary of developments relating to the consideration by the Human Rights Council of the question of the realization of the right to self-determination and a summary of recent concluding observations of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights, based on their consideration of periodic reports submitted by States parties to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in respect of the implementation of the right to self-determination guaranteed in article 1 of the two Covenants.

II. Consideration by the Human Rights Council of the question of the realization of the right of peoples to self-determination

3. Following its first special session held on 5 and 6 July 2006 to consider the human rights situation in the occupied Palestinian territories, the Human Rights Council held its third special session on 15 November 2006 "to consider and take action on the gross human rights violations emanating from Israeli military incursions in the Occupied Palestinian Territory, including the recent one in northern Gaza and the assault on Beit Hanoun". In its resolution S-3/1, the Council decided to dispatch urgently a high-level fact-finding mission to Beit Hanoun to, inter alia, assess the situation of victims, address the needs of survivors and make recommendations on ways and means to protect Palestinian civilians against any further Israeli assaults.

4. Subsequently, at its third and fourth regular sessions, the Council adopted resolutions 3/1 and 4/2 on the human rights situation in the Occupied Palestinian Territory and the follow-up to Council resolutions S-1/1 and S-3/1, adopted respectively at the first and third special sessions and dealing with issues relevant to the realization of the right to self-determination. The Council called for the implementation of resolutions S-1/1 and S-3/1, including the dispatching of urgent fact-finding missions.

5. The Human Rights Council held its fifth session from 11 to 18 June 2007 and considered the report submitted by the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, John Dugard, on the non-implementation of Human Rights Council resolution S-1/1 (A/HRC/5/11) and the report of the high-level fact-finding mission to Beit Hanoun established under resolution S-3/1 (A/HRC/5/20). On 18 June 2007, the Human Rights Council decided, without a vote, to postpone action on draft resolution A/HRC/5/L.5, entitled "Human rights situation in the Occupied Palestinian Territory: follow-up to Human Rights Council resolutions S-1/1 and S-3/1".

6. The High Commissioner for Human Rights submitted to the Human Rights Council at its fifth session a report on the follow-up to the report of the Commission of Inquiry on Lebanon (A/HRC/5/9). The Commission of Inquiry on Lebanon, established by the Human Rights Council in its resolution S-2/1 of 11 August 2006, had submitted its report (A/HRC/3/2) to the Council on 1 December 2006. The report of the High Commissioner outlines a wide range of activities and programmes launched by the international community that give concrete follow-up to the Commission of Inquiry's recommendations. It also highlights the importance of integrating human rights into any recovery process to ensure increased sustainability, as can be seen clearly in post-war Lebanon. The range of activities giving effect to the recommendations of the Commission of Inquiry is to be warmly welcomed, as are all efforts to integrate human rights into the reconstruction process.

7. At its fourth session, on 21 March 2007, the Human Rights Council considered the report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the rights of peoples to self-determination (A/HRC/4/42). Pursuant to Council decision 4/105 of 30 March 2007, consideration of draft decision A/HRC/2/L.19, entitled "The use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination", was deferred to the fifth session of the Council. On 20 June 2007, by its decision 5/102, the Council decided, without a vote, to postpone action on the draft decision.

8. On 18 June 2007, by resolution 5/1 entitled "Institution-building of the United Nations Human Rights Council", the Council adopted its agenda, which includes a specific item, item 7, on the human rights situation in Palestine and other occupied Arab territories. In accordance with the framework for the programme of work of the Council, item 7 also deals with the right to self-determination of the Palestinian people. The text annexed to the above-mentioned resolution provides details of the universal periodic review mechanism of the Council. In section A of this text, entitled "Basis of the review", the complementary and mutually interrelated nature of international human rights law and international humanitarian law are acknowledged and it is stipulated that the review should take into account applicable international humanitarian law.

III. Concluding observations of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights

9. The principle of self-determination is enshrined in Article 1, paragraph 2, of the Charter of the United Nations. Article 1, paragraph 1, of the International Covenant on Civil and Political Rights and article 1, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights affirm the right of all peoples to self-determination. Article 1, paragraph 3, of both Covenants imposes upon States parties, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, the obligation to promote the realization of that right and to respect it, in conformity with the provisions of the Charter.

10. The Human Rights Committee and the Committee on Economic, Social and Cultural Rights have recently addressed the right to self-determination in their

consideration of States parties' periodic reports submitted respectively under article 40 of the International Covenant on Civil and Political Rights and articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights. A summary of these observations is presented in the following sections.

A. Concluding observations of the Human Rights Committee

11. The Human Rights Committee addressed several issues relating to the right to self-determination in its concluding observations on Norway and the United States of America with respect to indigenous peoples.

12. In its concluding observations on Norway adopted on 24 March 2006, the Human Rights Committee welcomed

> "the Agreement entered into by the State party and the Sameting on 11 May 2005 setting out procedures for consultation between central government authorities and the Sameting, as well as the adoption of the Finnmark Act, which is in furtherance of articles 1 and 27 of the Covenant" (CCPR/C/NOR/CO/5, para. 5).

13. In its concluding observations on the United States of America adopted on 27 July 2006, the Committee noted

> "with concern that no action has been taken by the State party to address its previous recommendation relating to the extinguishment of aboriginal and indigenous rights. The Committee, while noting that the guarantees provided by the Fifth Amendment apply to the taking of land in situations where treaties concluded between the Federal Government and Indian tribes apply, is concerned that in other situations, in particular where land was assigned by creating a reservation or is held by reason of long possession and use, tribal property rights can be extinguished on the basis of the plenary authority of Congress for conducting Indian affairs without due process and fair compensation. The Committee is also concerned that the concept of permanent trusteeship over the Indian and Alaska native tribes and their land as well as the actual exercise of this trusteeship in managing the so-called Individual Indian Money (IIM) accounts may infringe upon the full enjoyment of their rights under the Covenant. Finally, the Committee regrets that it has not received sufficient information on the consequences on the situation of Indigenous Native Hawaiians of Public Law 103-150 apologizing to the Native Hawaiian Peoples for the illegal overthrow of the Kingdom of Hawaii, which resulted in the suppression of the inherent sovereignty of the Hawaiian people (articles 1, 26 and 27 in conjunction with article 2, paragraph 3 of the Covenant)" (CCPR/C/USA/CO/3/Rev.1, para. 37).

14. The Committee recommended that

> "the State party should review its policy towards indigenous peoples as regards the extinguishment of aboriginal rights on the basis of the plenary power of Congress regarding Indian affairs and grant them the same degree of judicial protection that is available to the non-indigenous population. The State party should take further steps to secure the rights of all indigenous peoples, under articles 1 and 27 of the Covenant, so as to give them greater influence in

decision-making affecting their natural environment and their means of subsistence as well as their own culture" (ibid.).

B. The Committee on Economic, Social and Cultural Rights

15. The Committee on Economic, Social and Cultural Rights addressed relevant aspects of the right to self-determination. In its concluding observations on Finland adopted on 18 May 2007, in which it expressed its concern

> "that in spite of the efforts made by the State party to solve the question of the ownership and use of land in the Sámi Homeland, the prevailing legal uncertainty surrounding this issue negatively affects the right of the Sámi to maintain and develop their traditional culture and way of life, in particular reindeer herding. The Committee also notes that failure to resolve the issue of land rights in the Sámi Homeland has so far prevented Finland from ratifying ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries" (E/C.12/CO/FIN/5, para. 11).

In its recommendations, the Committee urged

> "the State party to find an adequate solution to the question of the ownership and use of land in the Sámi Homeland in close consultation with all parties concerned, including the Sámi Parliament, and then to ratify ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries as a matter of priority" (ibid., para. 20).